

In the case of installment sales, the duty to pay the Retailers' Occupation Tax is not passed on to the purchasers of the paper, it remains with the retailers who sold the tangible personal property at retail. This is the legal consequence of the fact that the Retailers' Occupation Tax is an occupation tax imposed upon retailers for the privilege of engaging in the occupation of retailing. (This is a GIL).

May 16, 2000

Dear Xxxxx:

This letter is in response to your letter dated July 14, 1999. We apologize for the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

1. REQUEST FOR REFUND:

COMPANY hereby files a refund claim pursuant to Ill. Comp. Stat. Ch. 35 Sec. 630/10, and General Information Letter, Ill. Dep't of Revenue, January 16, 1996. Taxpayer respectfully requests a refund of sales and use tax and interest involving bad debts.

2. AMOUNT OF REFUND AND PERIOD:

Amount of Refund Requested for the period March 1, 1997 through December 31, 1998: \$\$\$\$.

3. NAME AND ADDRESS OF TAXPAYER:

NAME/ADDRESS

4. BASIS FOR THE CLAIM:

A. Statement of Facts

COPANY was incorporated in 1943 in the State of STATE, and has its administrative office located at ADDRESS.

COMPANY provides financing services for private-label credit card programs involving retailers in many industries. COMPANY purchases consumer revolving charge accounts from retailers on both a recourse and nonrecourse basis.

The transactions, which give rise to the bad debt sales tax refund in this claim begin with the sale of tangible personal property or taxable services by a retailer to a purchaser on a credit basis. Immediately following this sale the retailer pays the sales tax on the entire amount of the sale to the Illinois Department of Revenue. The retailer subsequently assigns the account to COMPANY. The purchase price COMPANY pays for the account includes the amount of sales tax paid by the retailer to the Department of Revenue, which is then collected by COMPANY from the consumer.

The retailer assigns the account to COMPANY. COMPANY, therefore, has all of the rights, title and interest of the retailer in the account. When a customer defaults, COMPANY will not be able in most instances to recover the outstanding balance. At that time, the unrecovered portion of the debt becomes a worthless debt for federal income tax purposes.

COMPANY, as the assignee of different retailers, is presently seeking to recover the amount of sales tax paid on the portion of the assigned account that have become worthless debts.

B. Discussion and Legal Analysis

It has been Department administrative policy to allow a retailer filing a return for gross sales to take a bad debt deduction. The Department has expressed this policy through numerous private letter rulings. See, Private Letter Ruling No. 96-0020, Illinois Dep't of Revenue, January 16, 1996; See also, Private Letter Ruling No. 94-0250, Illinois Dep't of Revenue, July 1, 1994; Private Letter Ruling No. 92-0368, Illinois Dep't of Revenue, July 16, 1992. The Department reaffirmed this position in a July 1, 1994 General Information Letter.

The General Information Letter provided that:

[A] retailer filing on the gross sales basis may take a bad debt deduction as an authorized deduction on the ST-1 return for the month in which that bad debt was written off for federal income tax purposes. General Information Letter, Ill. Dep't of Revenue, January 16, 1996. COMPANY is a retailer registered with the Department for purposes of the retailer's occupation tax.

Based on the discussion above, COMPANY is entitled to a refund of sales and use tax.

5. REQUEST FOR A CONFERENCE:

COMPANY respectfully requests a conference to review its refund claim with the Department.

6. ADDITIONAL INFORMATION:

COMPANY respectfully reserves the right to produce additional material, further explain its position, and to advance additional arguments.

Please be advised that this claim is based on actual write-offs of uncollectible accounts, net of any recoveries. Documentation to support this claim may be supplied upon request.

The Legal Services Division is unable to discuss your refund claim in the context of a General Information Letter. However, we hope the following general information about sales tax filing methods, installment and credit sales, the bad debt deduction, and claims for credit is helpful.

Under Illinois law, retailers generally report and pay Retailers' Occupation Tax on gross receipts actually received on sales of tangible personal property. They are thus filing on the "gross receipts" basis. Retailers who report and pay Retailers' Occupation Tax up front on the total selling price of tangible personal property, even though all gross receipts have not yet been received from purchasers, are filing on the "gross sales" basis.

The "gross receipts" basis is statutorily established and is the preferred method for filing sales tax returns. See 35 ILCS 120/3. However, the Department has promulgated a regulation, found at 86 Ill. Adm. Code 130.401 (see enclosed copy), under which use of the gross sales method is permitted under certain conditions. Gross sales basis retailers may take bad debt deductions on their monthly sales tax returns when they are written off the taxpayers' books as uncollectible for federal income tax reporting purposes. Proposed regulations published in the February 25, 2000 edition of the Illinois Register, codify and further modify this policy.

As a general proposition, companies that provide financing services may not claim a bad debt deduction for sales tax on retail transactions of tangible personal property where they were not the retailers. The Department has only authorized the bad debt deduction for gross sales basis retailers who have already paid the tax on sales, and having received no payment from customers for those sales, determine an amount as uncollectible for federal income tax purposes.

The question of whether transferred "paper" can carry with it the right to take a bad debt deduction must be analyzed in the context that only retailers who have actually paid taxes to the Department on their returns can take a bad debt deduction. In the case of gross sales filers, the tax has already been paid "up front" by the retailer. No duty to pay Retailers' Occupation Tax is passed on to purchasers of the paper.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.